

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

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MAR 19 1997

Federal Communications Commission
Office of the Secretary

In re

Amendment of Section 73.202(b))
Table of Assignments) RM - _____
FM Broadcast Stations)
(Genoa, Mt. Morris,)
and Oregon, Illinois))

To: Chief, Allocations Branch

PETITION FOR RULE MAKING and REQUEST FOR EXPEDITED CONSIDERATION

Farm Belt Radio, Inc., ("Farm Belt") by its attorney, hereby petitions for rule making to amend Section 73.202(b) of the Commission's rules.

Farm Belt is the permittee of unbuilt FM stations WOXM on Channel 291A at Oregon, Illinois (File No. BPH-930604MD) ("WOXM") and WSEY on Channel 239A at Mt. Morris, Illinois (File No. BPH-960830JD) ("WSEY"). Herein, Farm Belt requests the Commission to

- (1) substitute Channel 292A at Genoa, Illinois, in place of Channel 239A at Mt. Morris;
- (2) modify the WSEY construction permit to specify operation on Channel 292A at Genoa;
- (3) substitute Channel 239A in place of Channel 291A at Oregon to accommodate Channel 292A at Genoa;
- (4) modify the WOXM construction permit to specify operation on Channel 239A at Oregon; and
- (5) modify the reference point for Channel 293A at Seneca, Illinois, to specify the presently authorized construction permit transmitter site.

In support thereof, the following is shown:

This proposal requests modification of WSEY to a nonadjacent channel, a process which would normally allow for competing expressions of interest. However, in situations similar to the

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one presented herein, the Commission has acknowledged that, while not strictly adjacent channel relationships, the mutual exclusivity of the channels involved is similar to the scenario provided for in §1.420(g) of the rules which protects a station from competing applications for upgrades to non-mutually exclusive channels. The Commission has stated that it will look at each such request on a case-by-case basis. Modification of FM Broadcast Licenses to Higher Class Co-channels of Adjacent Channels, 60 RR2d 114, ¶24 (1986). And see, Notice of Proposed Rule Making (Parris Island and Hampton, South Carolina), 11 FCC Rcd 17273 (MMB 1996). The instant proposal is squarely analogous with this latter case.

Adopting this rule making will serve the interests of Section 307(b) of the Communications Act of 1934, as amended. An allotment will be moved from the smaller community of Mt. Morris (2,919 people) to the larger community of Genoa (3,038)¹. Moreover, WSEY's authorized 1 mV/m contour at Mt. Morris includes 55,457 people within a 1,830 km² area. As a maximum Class A station at Genoa operating from the reference point of 42° 01' 00" and 88° 49' 00", WSEY's 1 mV/m contour would serve 128,674 people and 2,511.7 km² in area. Neither Mt. Morris nor Genoa is within any urbanized area.

Genoa is an incorporated community with its own local government consisting of a full time city manager, as well as its own police, fire and water/sewer departments. It is located at

¹ All population figures are taken from the 1990 U.S. Census.

the intersection of State Routes 23 and 72 in DeKalb County. The county population is 77,932.

Genoa has its own post office and zip code: 60135. It is home to its own public schools serving over 1,200 students in grades K-12, six churches, scouting programs, a Lion's Club, Masonic Lodge, Rotary Club and over 20 other clubs and civic organizations, recreational facilities, a Chamber of Commerce, the Kishwaukee Valley Heritage Museum, the Falls Motors Museum, and a full complement of businesses and other services consistent with a community of its size.

Reallotting WSEY to Genoa will not deprive Mt. Morris of an "existing service." The Commission recognized at paragraph 19 and footnote 16 of its Modification of FM and TV Authorizations to Specify New Community of License, 4 FCC Rcd 4870, (1989) recon. granted in part, 5 FCC Rcd 7094 (1990) that for purposes of changing a community license, the phrase "existing service," excludes bare construction permits. Midway, Panacea and Quincy, Florida, 10 FCC Rcd 6112, ¶6 (MMB 1995). WSEY is an unbuilt station.

As shown by the attached engineering exhibit, Channel 292A will provide Genoa with a 3.16 mV/m signal, and comply with the Commission's minimum distance separation requirements from the proposed reference coordinates.²

² The attached engineering exhibit was prepared for, and submitted with the September 12, 1996 petition to substitute Channel 292A at Genoa for Channel 291A at Oregon. Its import, that Channel 292A at Genoa fully comports with all Commission spacing and coverage rules, is fully applicable here. In addition, WOXM's

This proposal is fully spaced to the construction permit site (41° 12' 38" and 88° 32' 21") for Station WAIZ(FM) Channel 239A Seneca, Illinois. However, while it is 3.4 kilometers short-spaced to the WAIZ allotment reference site (41° 14' 47" and 88° 35' 19"), the proposal is fully consistent with the Commission's channel spacing requirements set forth in §73.208 of the rules which states as follows:

§73.208(a)(1) The following reference points must be used to determine distance separation requirements when petitions to amend the Table of Allotments (§73.202(b)) are considered:

- (i) First, transmitter sites if authorized, or if proposed in applications with cut-off protection pursuant to paragraph (a)(3) of this section;
- (ii) Second, reference coordinates designated by the FCC;
- (iii) Third, coordinates listed in the United States Department of Interior publication entitled *Index to the National Atlas of the United States of America*; or
- (iv) Last, coordinates of the main post office.

This section of the rules was promulgated by the Commission's Report and Order in Amendment of Section 208 of the Commission's Rules Pertaining to Reference Points and Distance Computations 3 RR 2d 1589 (1964). Therein the Commission stated that the pre-existing rule was

not appropriate or adequate with regard to reference points and distance computations under the FM Table of Assignments since it makes no provisions for situations in which there are no transmitter sites for pertinent channels in communities other than those in which the license is sought. For

and WSEY's presently authorized transmitter sites are co-located. Therefore, the population and area losses which would occur to move WOXM to Channel 292A at Genoa are the same as will occur to move WSEY.

this reason, the rule needs to be amended to provide for distance computations in such situations.

Section 73.208 requires that the Commission will not consider the spacing to a channel's allotment reference coordinates until it has determined that there is no authorized transmitter site for that channel. Accordingly, since Farm Belt's proposal satisfies the highest spacing priority in §73.208(a)(1)(i), there is no requirement that the station be fully spaced to any of the lesser priority reference points or geographical locations. This reading of §73.208 of the rules is supported by the plain language of the rule and by the ruling of Administrative Law Judge Joseph P. Gonzalez in Mary Ann S. Bohi FCC 86M-439, released February 3, 1986, (copy attached).³

The petitioner recognizes that the Allocations Branch has taken a contrary position in its letter of March 12, 1997, which stated that both the authorized transmitter site and the allotment reference site must be protected until a license is granted, accordingly, the Commission is also requested to change the Channel 239A reference coordinates to those set forth in station WAIZ's construction permit as part of this proceeding. Farm Belt has attached as an Exhibit hereto the written authority from the

³ The ruling in Cut and Shoot, Texas, 11 FCC Rcd 16383 (MMB 1996), is distinguishable from the facts of this proceeding. In Cut and Shoot, the Commission acknowledged at Footnote 1 that the station at issue had a licensed transmitter site and a separate construction permit site. Therefore, both "authorized transmitter sites" were to be protected under §73.208 of the rules. Station WAIZ, however, has a single "authorized site." Therefore, pursuant to §73.208(a)(1), the allotment reference coordinate is disregarded for channel spacing purposes in a rule making proceeding.

WAIZ permittee to make such a change.

As WSEY is unbuilt and Farm Belt seeks to relocate the station's transmitter site, there will be theoretical areas and populations which will lose reception service, as well as areas and populations which will receive new service. As shown by the attached engineering exhibit, no white or gray area will be created by the proposed modification of WSEY's facilities authorized in its construction permit and Mt. Morris, Illinois, will continue to receive service from stations WZOK(FM), WXXQ(FM), WIXN(FM) and WNIJ(FM), among others. All areas within WSEY's present 1 mV/m contour will continue to receive service (1 mV/m for FM and 2 mV/m for AM) from at least three AM and two FM stations. The population of the loss area is roughly 41,000.

The population in the proposed 1 mV/m gain area at Genoa is roughly 128,400 people. This is more than twice the population which would be served by WSEY at Mt. Morris. As shown by the engineering exhibit, the proposed gain area also receives service from a number of stations.

WOXM will be required to change to Channel 239A at Oregon, Illinois, in order to accommodate WSEY's move to Channel 292A at Genoa. The proposed reference coordinates for Channel 239A are 41° 59' 04" and 89° 29' 52". The modified allotment will cover Oregon with a city-grade signal in full compliance with the Commission's spacing rules. Farm Belt, as the WOXM permittee,

consents to the modification of its WOXM construction permit.⁴

WOXM is a grandfathered 3 kW Class A station, limited in its power and coverage area. It is prohibited from increasing facilities on its own or an adjacent channel due to interstation spacing restrictions. There is no tower site available from which WOXM may increase power as presently allotted. Adopting the proposed changes will allow WOXM to become a full Class A facility at Oregon, serving a wider area and 80,126 people in its 1 mV/m service area from the proposed reference coordinates.

Farm Belt will promptly apply to modify the WSEY and WOXM construction permits upon favorable Commission action on this petition, and will promptly construct the authorized facilities upon grant of the respective applications.

In view of the above, the Commission should amend Section 73.202(b) as follows:

<u>Community</u>	<u>Present</u>	<u>Proposed</u>
Genoa, Illinois	----	292A
Mt. Morris, Illinois	239A	----
Oregon, Illinois	291A	239A
Seneca, Illinois	modify 239A reference point	

The Commission is respectfully requested to grant expedited consideration to this proposal. This Petition for Rule Making was initially filed with the Commission on December 23, 1996, however, it was returned to Farm Belt by letter dated March 12,

⁴ While Circleville, Ohio, 8 FCC 2d 159 (1967) requires the petitioner to reimburse the reasonable a prudent expenses incurred by WOXM to accommodate WSEY's proposal, there is little point in requiring Farm Belt, permittee of both stations, to reimburse itself. Farm Belt pledges to apply for the modified facilities and promptly construct them after they are authorized.

1997, on the basis that the proposal was not fully spaced to the allotment reference coordinate for station WAIZ. As shown above, there is no such spacing requirement under the Commission's rules when there is an authorized transmitter site for the station. However, out of an abundance of caution, the Petitioner has secured the consent from the WAIZ permittee to change the station's reference point to that authorized in the station's construction permit.

Respectfully Submitted,

FARM BELT RADIO, INC.

By 

John S. Neely
Its Attorney

March 19, 1997

Miller & Miller, P.C.
P.O. Box 33003
Washington, DC 20033

Before the
Federal Communications Commission
Washington, D. C. 20554

FCC 86M-439

2356

In re Applications of

MARY ANN S. BOHI

et al.

For a Construction Permit for a new
television station to operate on
Channel 50, Tampa, Florida

MM DOCKET NO. 84-666

MM DOCKET NOS. 84-668 to 84-673

MM DOCKET NO. 84-676

MEMORANDUM OPINION AND ORDER


Issued: January 30, 1986; Released: February 3, 1986

1. Under consideration is the Motion for Summary Decision filed by Bay Area Broadcasting, Ltd. (Bay Area) on December 18, 1985; and the Mass Media Bureau's Comments on Motions for Summary Decision filed on January 2, 1986.

2. Bay Area moves for summary decision of the short-spacing issue designated against it in the Hearing Designation Order released in this proceeding on July 18, 1984. The Hearing Designation Order noted that Bay Area's originally proposed transmitter site was short-spaced to the reference point for Channel 65, Orlando, Florida, but further recognized that the proposed site was fully spaced to the proposed antenna sites of all four competing applicants in the Channel 65, Orlando proceeding. By Order released on October 18, 1985 in Metro Broadcasting, Inc. (FCC 85-558), the Commission upheld the grant of the construction permit for Channel 65, Orlando, Florida to one of the four applicants. Since Bay Area's proposed antenna site is fully spaced to that of the permittee for Channel 65, Orlando, Florida, Bay Area's proposal is in compliance with the mileage separation requirements of Section 73.610 of the Commission's Rules. Summary decision in Bay Area's favor of the short-spacing issue is therefore warranted, and it will be so ordered.

3. Accordingly, IT IS ORDERED that the unopposed Motion for Summary Decision filed by Bay Area Broadcasting, Ltd. (MM Docket No. 84-668, File No. BPCT-840413KI) on December 18, 1985 IS GRANTED, and the short-spacing issue designated against Bay Area Broadcasting, Ltd. in the Hearing Designation Order released in this proceeding on July 18, 1984 IS RESOLVED in Bay Area Broadcasting, Ltd.'s favor.

FEDERAL COMMUNICATIONS COMMISSION


Joseph P. Gonzalez
Administrative Law Judge

Allocations Branch
Federal Communications Commission
Washington, DC 20554

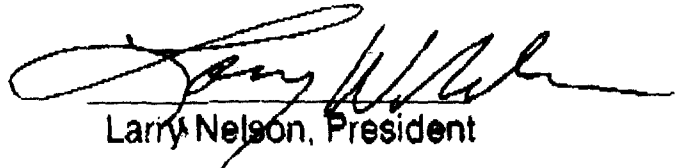
RE: WAIZ(FM) Seneca, Illinois

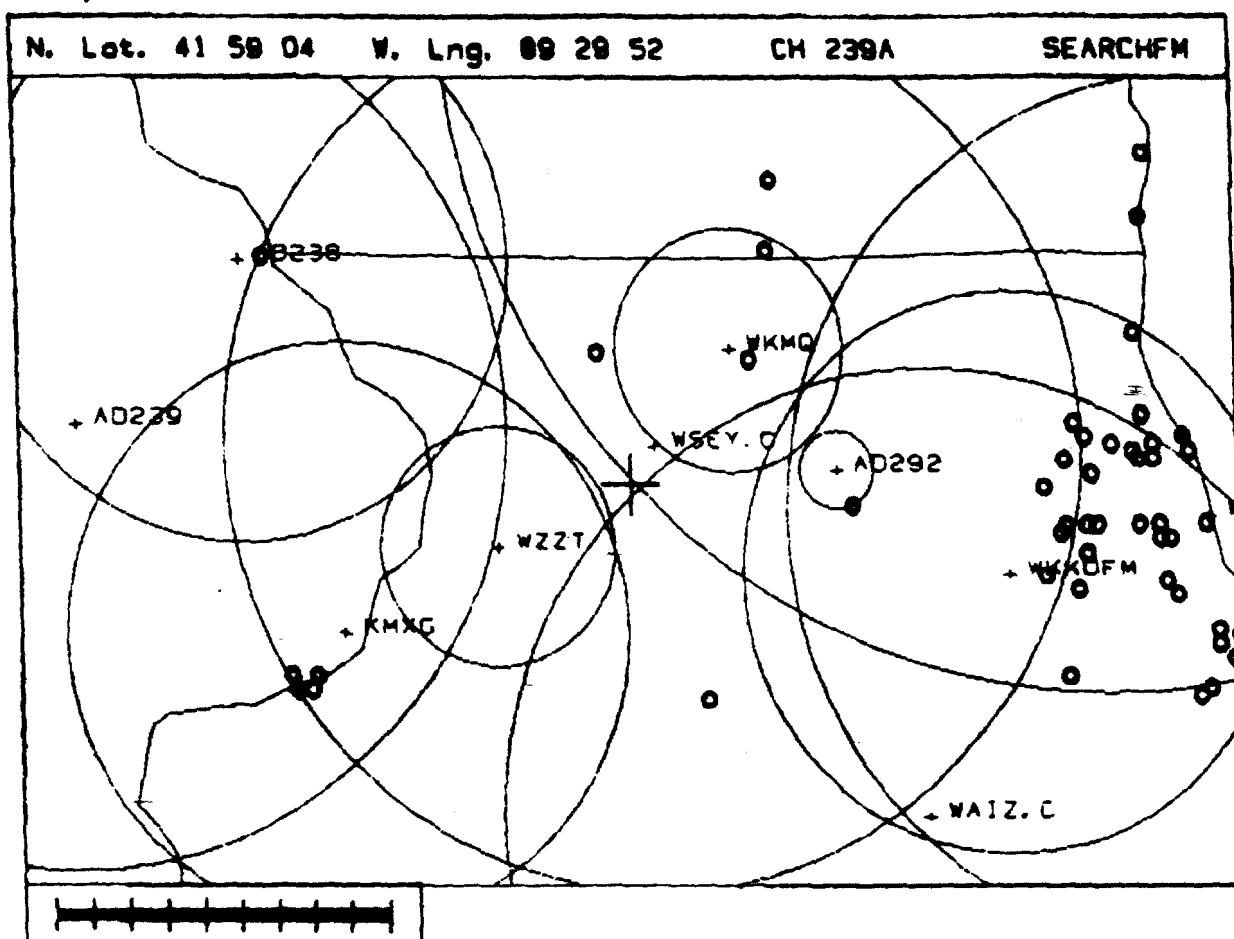
Dear Sir:

Nelson Enterprises, Inc., is the permittee of station WAIZ(FM), Channel 239A, Seneca, Illinois. You are respectfully requested to change the station's allotment reference coordinates to 41° 12' 38" and 88° 32' 21", the tower site authorized in construction permit File No. BPH-900517MI.

Nelson Enterprises, Inc.

3/18/97
DATE


Larry Nelson, President



Call	CH#	Location		D-KM	Azi	FCC	Margin
WSEY.C	239A	Mount Morris	IL	11.70	33.8	115.0	-103.30
WZTR	239B	Milwaukee	WI	178.86	46.0	178.0	0.86
WAIZ.C	239A	Seneca	IL	117.37	136.9	115.0	2.37
WZZT	238A	Morrison	IL	39.00	245.3	31.0	8.00
KMXG	241C1	Clinton	IA	85.33	243.0	75.0	10.33
WKMD	237A	Winnebago	IL	43.77	38.8	31.0	12.77
WKKDFM	240A	Aurora	IL	104.87	102.8	72.0	32.87
AD239	239A	Anamoesa	IA	148.81	275.9	115.0	33.81
WNUA	238B	Chicago	IL	155.75	92.8	113.0	42.75
AD238	238A	Aubury	IA	118.40	298.9	72.0	48.40
AD292	292A	Genoa	IL	56.54	86.1	10.0	46.54

ENGINEERING REPORT
IN SUPPORT OF
CHANNEL 292A - 6 KW
GENOA, ILLINOIS

This engineering report is in support of Farm Belt Radio, Inc. (FBR) Proposed Rulemaking to amend Section 73.202(b) Table of Assignments, FM Broadcast Stations at Oregon and Genoa, Illinois.

Oregon, Illinois currently is allocated FM Channel 291A. This channel is short spaced under current spacing rules to both 291B Waukesha and 291A Streator and is restricted to 3kw, 100M HAAT. Exhibit A demonstrates the short spacing and the fact that there is no site for Channel 291A which meets current spacing rules for a Class A FM station.

The City of Oregon, Illinois currently receives service (1mV/m) from at least 4 FM stations:

WZOK	Rockford	50kw 131m HAAT
WXXQ	Freeport	50kw 122 m HAAT
WIXN	Dixon	6kw 100 m HAAT
WNIJ	Rockford	50kw 112m HAAT

Oregon currently receives service from more than 4 AM stations:

WMAQ	Chicago	670khz, 50 kw	7mV/m +
WGN	Chicago	720khz, 50 kw	5mV/m +
WBBM	Chicago	780khz, 50 kw	3mV/m +
WHRL	Rochelle	1060khz, 25kw	4mV/m +

All areas within the entire 1mV/m service contour of FBR's current CP at Oregon is serviced by at least two existing FM stations 1mV/m contour and at least three existing AM radio stations 2mV/m contour or better. (See Exhibit D)

Reallotting Channel 291A (3kw 100m HAAT) from Oregon to 292A (6kw 100M HAAT) at Genoa can be accomplished with the elimination of the mutually exclusive Channel 291A at Oregon as demonstrated in Exhibit B.

Exhibit C depicts the allocation window for Channel 292A, the location of the City of Genoa, and City Grade Contour.

A Population count (1990 census) and an area study was done using the 1 mV/m contour maximum facility at Oregon, IL 42-03-53, 89-26-00 - 3kw, 100M HAAT and at Genoa, IL 42-01-00, 88-49-00 - 6kw, 100M HAAT.

	<u>GENOA</u>	<u>OREGON</u>
Population	128,674	41,213
Area (Sq Km)	2,511.7	1,830

(Exhibit C shows the 1mV/m contour overlap from the two facilities with less than 250 persons; the City of Genoa (1990 Census) was 3,083.)

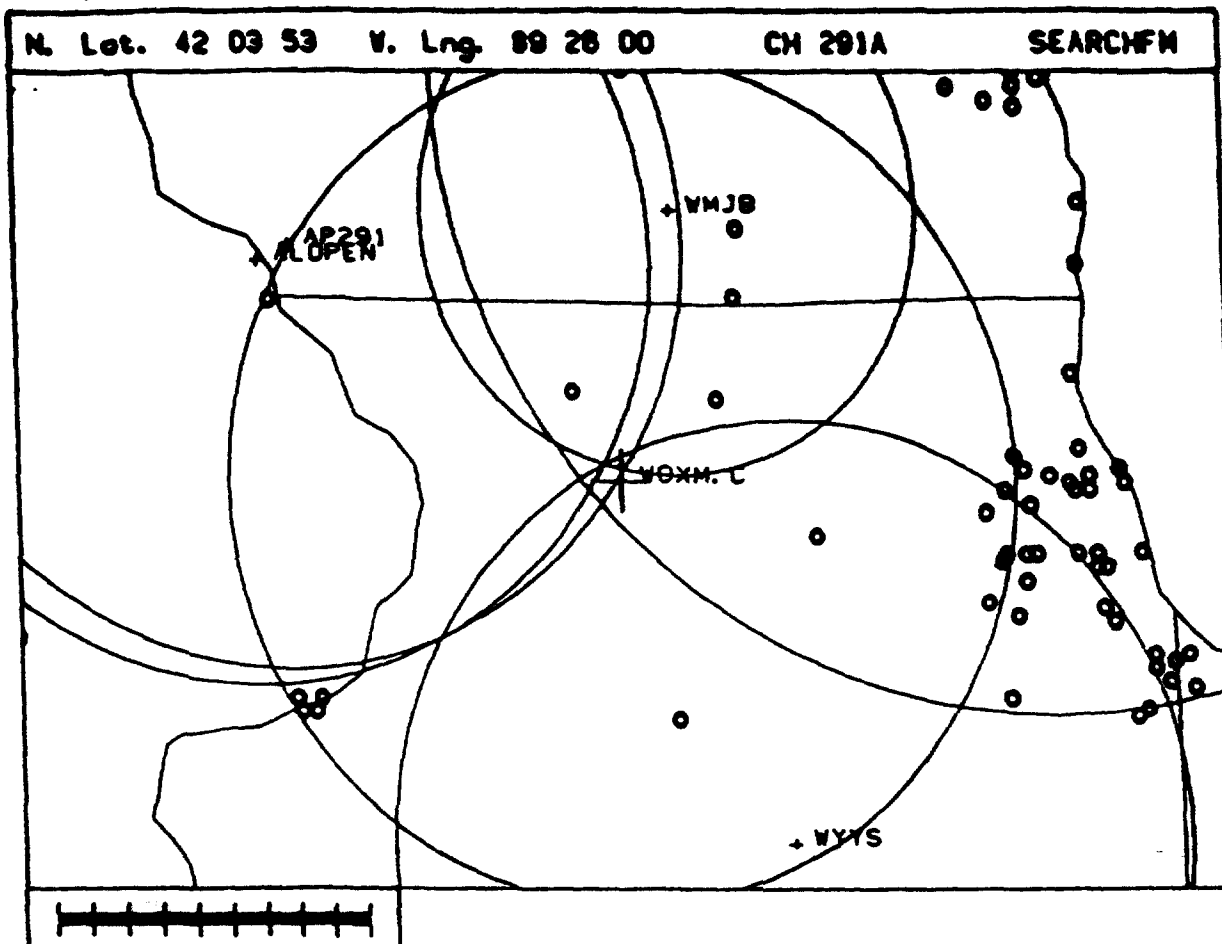
As demonstrated above, the reallocation of Channel 291a Oregon to Channel 292A Genoa will be beneficial in furthering FCC allocation standards, and better utilization of the spectrum serving an additional 84,461 persons in the 1mV/m at Genoa, Illinois.

I, Larry Nelson, do attest that the above Engineering Statement was prepared by myself or under my direction and is true and correct to the best of my knowledge and belief.


A handwritten signature in black ink, appearing to read "Larry Nelson", is written over a horizontal line. Below the line, the name "LARRY NELSON" is printed in a sans-serif font.

LARRY NELSON

Larry Nelson 850-882-1000 X180 : Broadcast Center Plans 11 80848



Call	CH#	Location		D-KM	Azi	FCC	Margin
VOXM.C	291A	Oregon	IL	0.00	0.0	115.0	-115.00
WMILFM	291B	Waukesha	WI	189.38	47.2	178.0	-8.84
WYYS	291A	Streator	IL	108.93	154.3	115.0	-6.07
AP291	291A	Sageville	IA	115.90	303.7	115.0	0.90
WMJB	290A	Evansville	WI	75.11	11.5	72.0	3.11
ALOPEN	291A	Sageville	IA	121.43	299.5	115.0	6.43

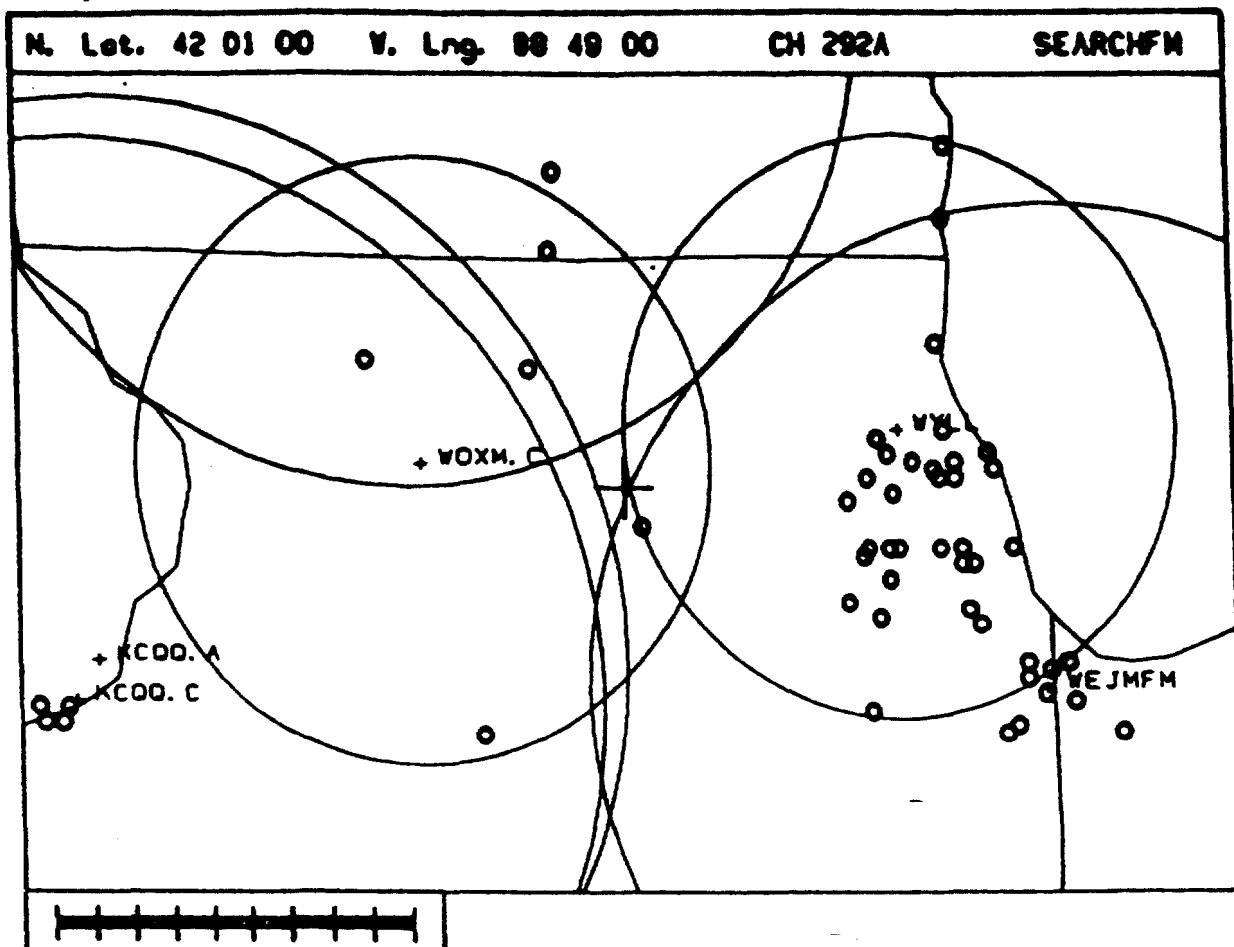


EXHIBIT B GENOA IL. CH 292A 6.000W SPACING

Call	CH#	Location		D-KM	Azi	FCC	Margin
WOXM. C	291A	Oregon	IL	51.34	276.2	72.0	-20.66
WEJMF	292A	Lansing	IL	118.26	114.4	115.0	1.26
WYLL	294B	Des Plaines	IL	70.34	78.8	69.0	1.34
KCOQ. A	293C1	Davenport	IA	139.12	252.8	133.0	6.12
WVQMFM	292A	Middleton	WI	127.36	334.7	115.0	12.36
WVQMFM	292A	Middleton	WI	127.39	334.7	115.0	12.39
KCOQ. C	293C1	Davenport	IA	147.52	249.8	133.0	14.52

Larry Nelson 820-882-1000 X100 1 Broadcast Center Phone 31 80848

N. Lat. 42 01 00 W. Long. 98 49 00 CH 292A SEARCHFM

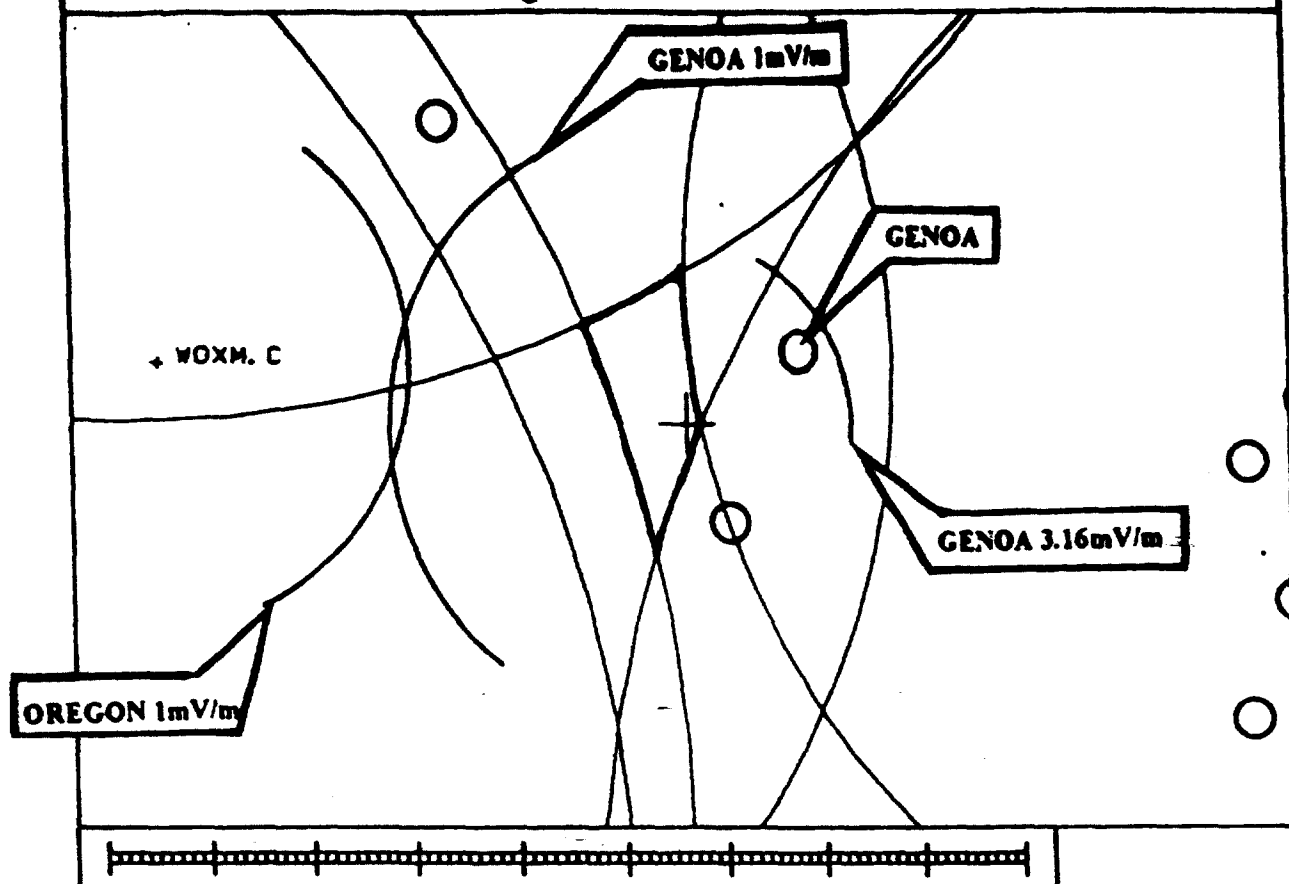


EXHIBIT C GENOA CH292A 6KW. 100M 3.16mv/m

Call	CH#	Location		D-KM	Azi	FCC	Margin
WOXM. C	291A	Oregon	IL	51.34	276.2	72.0	-20.66
WEJMF	292A	Lansing	IL	116.26	114.4	115.0	1.26
WYLL	294B	Des Plaines	IL	70.34	78.8	69.0	1.34
KCQO. A	293C1	Davenport	IA	139.12	252.6	133.0	6.12
WWQMFM	292A	Middleton	WI	127.36	334.7	115.0	12.36
WWQMFM	292A	Middleton	WI	127.39	334.7	115.0	12.39
KCQO. C	293C1	Davenport	IA	147.52	249.8	133.0	14.52

PROPOSED PREDICTED SERVICE CONTOURS
 1270 PM - OREGON, ILLINOIS
 0.0 KW ERP 100 M HAAT

EXHIBIT D

